

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1-10 are pending in the application, with claim 1 being the independent claim, and claims 8-10 being withdrawn. Support for the amendments to claims 1, 6 and 7 appears throughout the application, including, for example, at page 2, Ins. 13-25 and Figure 4. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Claim Objections

The Examiner has objected to claim 4 as being an improper multiple dependent claim, and has not further treated this claim on the merits. Applicants respectfully submit that claim 4 is not improper. Claim 4 is not a multiple dependent claim. Claim 4 depends from claim 3 only. Claim 3 is a proper multiple dependent claim which depends from "claim 1 or 2." See MPEP 608.01(n). Applicants therefore respectfully request that the objection be withdrawn and that claim 4 be examined on the merits.

Rejections under 35 U.S.C. § 102

Claims 1-3 and 5-6 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by DE951119 ("DE119"). Applicants respectfully traverse this rejection.

Present independent claim 1 recites a device for treating woody plants comprising, *inter alia*, "only one radial slot which communicates with the axial bore." In contrast to the presently claimed invention, DE119 discloses a plurality of radial slots (at 15a) provided on the external circumference that are intended to facilitate the injection of a substance (see, e.g., DE119, Figure 1, and page 2, Ins. 35-40).

Under 35 U.S.C. § 102, a claim can only be anticipated if every element in the claim is expressly or inherently disclosed in a single prior art reference. See *Kalman v. Kimberly Clark Corp.*, 713 F.2d 760, 771 (Fed. Cir. 1983), *cert. denied*, 465 U.S. 1026

(1984). DE119 does not expressly or inherently disclose every element of the presently claimed invention. Therefore, this reference cannot support a rejection under 35 U.S.C. § 102(b), and Applicant therefore respectfully asserts that DE119 does not anticipate claims 1 and 8-11.

For at least the foregoing reasons, claim 1, and claims 2-3 and 5-6 which depend from claim 1, are patentable over DE119. Applicants therefore respectfully request that this rejection be reconsidered and withdrawn.

Moreover, with respect to dependent claim 6, the Examiner asserts that DE119 discloses an element (21, 22, 23) for turning and/or adjusting the device which is arranged *behind* the fixing element (14b or 17). *See* Office Action, page 3. However, element (21, 22, 23) of DE119 is *in front of* the alleged fixing element (14b or 17). Present claim 6 has been amended to clarify that "the fixing element is arranged between the radial slot and the element for turning and/or adjusting the device." DE119 does not disclose this claimed configuration. Rather, in DE119, the element (21, 22, 23) is between the alleged fixing element (14b or 17) and the alleged radial slot 15a. Applicants therefore respectfully request that this rejection be reconsidered and withdrawn.

Rejections under 35 U.S.C. § 103

Claim 7 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over DE119 in view of U.S. Patent No. 4,908,983 to Mazur *et al.* ("Mazur").

Present claim 7 depends from independent claim 1 and therefore is patentable for at least the same reasons as discussed above with respect to claim 1. The device of the present invention having only one radial slot makes it possible to economize with the amount of plant treatment product. DE119 does not disclose only one radial slot, and there is no indication in DE119 that only one radial slot may be provided so as to be able to reduce the amount of plant protection product required by a targeted supply.

With a device having only one radial slot as claimed, a plant treatment product can be targeted to a woody plant (for example, vertically upwards, such as towards a

tree top). Using the presently claimed device, the plant treatment products can be translocated (for example specifically to the leaves), rather than being distributed more randomly in the woody plant, as is invariably the case using the DE119 device. *See* the present Specification at page 4, lns. 19-20 and page 5, lns. 5 to 7.

Mazur does not cure the deficiencies of DE119 with respect to claim 1. Mazur discloses a plurality of injectors (40) with an injector tip (42), which is different to a device having a cylindrical injection element equipped with an axial bore and only one radial slot as required by the present invention. Indeed, the cited references DE119 and Mazur are like the references described in the present application at page 3, lns. 3-22, in which a plurality of outlets are provided. It therefore appears that the person skilled in the art has always aimed at being able to supply, to a woody plant, a large amount of treatment products in as short a time as possible via a multiplicity of outlets or multiple injectors (e.g., injectors 40 as described Mazur). Thus, the cited references suggest maximizing the number of such outlets or multiple injectors so as to favor the discharge of treatment product (*cf.*, e.g., DE119, page 2, lns. 35-40). However, the disadvantage of such arrangements is that high application rates of plant treatment products are required and the damage inflicted on the treated woody plant can be significant. *See* the present Specification at page 1, lns. 16-20. Thus, DE119 and Mazur do not render obvious claim 1 and dependent claim 7.

Moreover, present claim 7 recites "a marker element that indicates the radial position of the radial slot, wherein the fixing element is arranged between the marker element and the radial slot." For example, in the present application (*see* Figure 4 and the present Specification at page 3, lns. 11-13 and page 4, lns. 19-20), a marker (8) indicates a radial position of a slot (3), and the fixing element is arranged between the marker element and the radial slot.

The Examiner asserts that DE119 is silent about a marker element which indicates the position of the radial slot, but that Mazur discloses a marker element (99) which indicates the position of a cap (98) for alignment with the marker element so as to inject a specific amount of fluid from an injector. Office Action, page 4. However, in Mazur, the alleged marker element (99) merely indicates the stroke *length* of the injection

cylinder and does not indicate the *radial* position of any fluid outlet. Mazur therefore does not disclose "a marker element that indicates the radial position of the radial slot," as claimed. Thus, even assuming, *arguendo*, that DE119 and Mazur can be combined as alleged by the Examiner, the combination of DE119 and Mazur would not have arrived at the claimed invention.

Establishment of a *prima facie* case of obviousness requires that the Examiner factually show that the references in combination disclose *all* of the elements of the claims in their proper function, as well as provide a reasoned articulation that the combination of elements would have been known to produce a predictable result. In the present case, this burden has not been met.

Applicants therefore respectfully request that this rejection be reconsidered and withdrawn.

Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Respectfully submitted,
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